REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

FIRST LEPANTO TAISHO INSURANCE CORPORATION,
Respondent.

C.T.A. EB NO. 171
(C.T.A. Case No. 7002)

Present:

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

Promulgated:
JAN 3 1 2007

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DECISION

BAUTISTA, J.:

The Case

Before Us is a Petition for Review filed by the Commissioner of Internal Revenue praying for the reversal of (1) the Resolution of this Court's Second Division ("Court in Division") in C.T.A. Case No. 7002 promulgated on October 5, 2005 canceling the assessment against the respondent in the amount of P3,017,022.50 for being issued beyond the prescriptive period mandated by law, and (2) the Court in Division's Resolution promulgated on February 20, 2006 denying petitioner's Motion for Reconsideration.

Antecedent Facts

The material antecedents as culled from the records are as follows:

On October 29, 2003, respondent received from petitioner a Formal Assessment Notice ("FAN") dated October 28, 2003 covering taxable year 1999, assessing the respondent deficiency minimum corporate income tax, withholding tax and VAT, in the total amount of P3,017,022.50, inclusive of surcharges and interest.

On November 19, 2003, respondent, through its tax counsel, filed a protest letter addressed to Ms. Estellita C. Aguirre, OIC-Deputy Commissioner, Large Taxpayers Service of the BIR National Office. In the said letter, respondent specified the factual and legal bases of its protest and raised the defense of prescription.

Respondent's protest has not yet been acted upon by the petitioner on May 17, 2004, the one hundred eightieth (180th) day from the date of filing its protest. Hence, on June 16, 2004, respondent filed a Petition for Review with the Court in Division seeking to annul and set aside the findings of petitioner holding respondent liable for deficiency taxes for the taxable year 1999 in the amount of P3,017,022.50.

After several motions for extensions of time to file an Answer that was granted by the Court in Division, petitioner filed an Answer on September 2, 2004.

On September 16, 2004, respondent filed a Reply. Thereafter, the case was set for Pre-trial. With the submission of the parties' Joint Stipulation of Facts and Issues, the Pre-trial was terminated.

Trial ensued and on January 10, 2005, respondent presented Ms. Mina B. Infante, its Vice- President for Finance, as its first witness.

On June 7, 2005, respondent filed a Motion for Early Resolution of the Issue of Prescription. In the said Motion, respondent stated that it filed its Final Corporate Income Tax Return for taxable year 1999 on April 17, 2000 and that it signed a Waiver of the Defense of Prescription under the Statute of Limitations ("first waiver") which expired on December 31, 2002. Respondent also argued that the alleged second Waiver that it purportedly executed is invalid. Consequently, there was no valid extension of the period within which the petitioner may issue an assessment notice. Thus, the FAN dated October 28, 2003 and received by respondent on October 29, 2003 should be cancelled since it was issued beyond the Statute of Limitations.

On July 6, 2005, petitioner filed an Opposition to the said Motion. On July 13, 2005, respondent filed a Rejoinder to petitioner's Opposition.

The Ruling of the Court in Division

On October 5, 2005, the Court in Division rendered a Resolution granting respondent's Motion since it found the second Waiver of Statute of Limitations null and void for failure to comply with the prescribed requirements of Revenue Memorandum Order ("RMO") No. 20-90. The Court in Division found that the said waiver failed to state both the date of execution by the taxpayer, and the date of

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acceptance by the petitioner. Respondent was also not furnished a copy of the said waiver. The Court in Division also ruled that the first waiver was null and void as it was signed only by the Assistant Commissioner of the Large Taxpayers Service who is not the authorized signatory under RMO 20-90 where the amount of tax involved exceeds One Million Pesos.

The dispositive portion of the assailed Resolution reads as follows:

> "**WHEREFORE**, premises considered, the assessment for deficiency taxes for taxable year 1999 in the amount of P3,017,022.50, including interests and penalties, is hereby **CANCELLED and SET ASIDE** for having been issued way beyond the prescriptive period.
>
> **SO ORDERED**."

On November 2, 2005, petitioner filed a Motion for Reconsideration of the aforementioned Resolution relying on the following arguments:

1. The Assistant Commissioner-Large Taxpayers Service is the proper signatory of the first waiver.
2. The second waiver is valid because it was executed on the day it was notarized, i.e. May 21, 2002.
3. Respondent is aware of the acceptance of the waiver since it appeared before the notary public together with the petitioner.

On November 22, 2005, respondent filed an Opposition thereto. On February 20, 2006, the Court in Division issued a Resolution denying the said Motion for lack of merit. It stated that even if the first waiver executed by the taxpayer was not raised as an issue, the Court had to examine the same since the validity of the second waiver further extending the period to assess would depend on the validity of the first waiver. Thus, the Court in Division held that since the first waiver was invalid, there was no need to rule on the validity of the second waiver.

The Issues

Hence, petitioner filed the instant Petition for Review *En Banc,* raising the issue of whether or not the Court in Division erred in ordering the cancellation of the assessments on the ground of prescription.

Corollary to the above-mentioned issue, petitioner assigned the following errors allegedly made by the Court in Division, viz:

> A. The Court in Division erred in ruling that the first waiver is void because it was signed only by the Assistant Commissioner of the Large Taxpayers Service;
>
> B. The Court in Division erred in ruling that the second waiver is void because the date of execution by the taxpayer and the date of acceptance by the BIR of the waiver are not indicated in the waiver and respondent was not furnished a copy of the waiver;
>
> C. The Court in Division erred in ruling that the second waiver is void because the authority of the signatory of the respondent, Ms. Nila Infante, is not notarized; and
>
> D. The Court in Division erred in canceling the assessments for being issued beyond the reglementary period.

The Ruling of the Court En Banc

The petition is devoid of merit.

Petitioner claims that the first waiver is not an issue since respondent allegedly failed to question its validity.

We disagree.

As correctly explained by the Court in Division in its Resolution dated February 20, 2006, the first waiver executed by the respondent had to be examined since the validity of the second waiver further extending the period to assess would depend on the validity of the first waiver.

Moreover, as pointed out by the respondent in its Memorandum, the first waiver was mentioned in paragraph 13 of the Petition for Review filed with the Court in Division on June 16, 2004.[1] However, its validity was never admitted. The claim was denied by petitioner per paragraph 6 of its Answer.[2] Petitioner further claimed in paragraph 14 of its Answer that the first waiver is immaterial in view of the execution of the alleged second waiver.[3] Thus, respondent had to bring to fore the legal infirmities of the second waiver.

Petitioner further contends that the first waiver is valid because the Assistant Commissioner of the Large Taxpayers Service is authorized to sign the same under BIR Revenue Delegation Authority Order ("RDAO") No. 5-2001 dated August 2, 2001.

We agree with petitioner.

The Supreme Court has consistently ruled that the statute of limitations on assessment and collection of national internal revenue taxes benefits both the Government and the taxpayer, it principally intends to afford protection to the taxpayer against unreasonable investigation.[4] In order to provide an even better

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[1] Page 3, CTA Records.
[2] Page 48, CTA Records.
[3] Page 49, CTA Records.
[4] Bank of the Philippine Islands v. Commissioner of Internal Revenue, G.R. No. 139736, October 17, 2005 citing *Republic v. Ablaza, 108 Phil 1105, 1108 (1960).*

protection to the taxpayer against unreasonable investigation, the Tax Code of 1997 identifies specifically in Sections 222 and 223 thereof the circumstances when the prescriptive periods for assessing and collecting taxes could be suspended or interrupted.

Under paragraphs (b) and (d) of Section 222 of the Tax Code of 1997, the prescriptive periods for assessment and collection of national internal revenue taxes, respectively, could be waived by agreement, *to wit* —

> SEC. 222. — Exceptions as to period of limitation of assessment and collection of taxes. —
>
> xxx xxx xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx
>
> (d) Any internal revenue tax which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon."

The agreements mentioned in the afore-quoted provisions are referred to as waivers of the statute of limitations. The waiver of the statute of limitations, whether on assessment or collection, should not be construed as a waiver of the right to invoke the defense of prescription but, rather, an agreement between the taxpayer and the BIR to extend the period to a date certain, within which the latter could still

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assess or collect taxes due. The waiver does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally.[5]

A valid waiver of the statute of limitations under paragraphs (b) and (d) of Section 222 of the Tax Code of 1997 must be: (1) in writing; (2) agreed to by both the Commissioner and the taxpayer; (3) before the expiration of the ordinary prescriptive periods for assessment and collection; and (4) for a definite period beyond the ordinary prescriptive periods for assessment and collection. The period agreed upon can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon.

The BIR issued RMO No. 20-90 on April 4, 1990 to lay down an even more detailed procedure for the proper execution of a waiver of the statute of limitations. RMO No. 20-90 mandates that the procedure for the execution of the waiver shall be strictly followed, and any revenue official who fails to comply therewith resulting in the prescription of the right to assess and collect shall be administratively dealt with.[6] The RMO authorizes the following officials to sign the waiver:

"A.	In the National Office	
1.	ACIRs for Collection, Special Operations, National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver.	For tax cases involving not more than P500,000.00
2.	Deputy Commissioner	For tax cases involving more

[5] Philippine Journalists, Inc. v. Commissioner of Internal Revenue, G.R. No. 162852, December 16, 2004, 447 SCRA 214.
[6] Bank of the Philippine Islands v. Commissioner of Internal Revenue, supra.

		than P500,000.00 but not more than P1M
3.	Commissioner	For tax cases involving more than P1M

B. In the Regional Offices

1. The Revenue District Officer with respect to tax cases still pending investigation and the period to assess is about to prescribe regardless of amount.

2. The Regional Director, the Assistant Regional Director, the Chief, Assessment Branch or the Chief, Legal Branch with respect to cases still pending review and the period to assess/collect is about to prescribe, regardless of amount.

3. The Regional Director, the Assistant Regional Director, the Chief, Collection Branch or the Chief, Legal Branch with respect to cases still pending collection and the period to assess/collect is about to prescribe regardless of amount."

On August 2, 2001, the BIR also issued RDAO No. 05-01 for the delegation of the authority to sign and accept the Waiver of the Defense of Prescription under the Statute of Limitations prescribed in Sections 203, 222 and other related provisions of the Tax Code of 1997. Under the said RDAO, the following are the authorized Revenue Officials:

"A. For National Office cases

Designated Revenue Official

1.	Assistant Commissioner (ACIR), Enforcement Service	For tax fraud and policy cases
2.	**ACIR, Large Taxpayers Service**	**For large taxpayers cases other than those cases falling under Subsection B hereof**
3.	ACIR, Legal Service	For cases pending verification and awaiting resolution of certain legal issues prior to prescription and for issuance/compliance of Subpoena Duces Tecum

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4.	ACIR, Assessment Service (AS)	For cases which are pending in or subject to review or approval by the ACIR, AS
5.	ACIR, Collection Service	For cases pending action in the Collection Service

B. For cases in the Large Taxpayers District Office (LTDO)

The Chief of the LTDO shall sign and accept the waiver for cases pending investigation/action in his possession.

C. For Regional cases

Designated Revenue Official

1.	Revenue District Officer	Cases pending investigation/ verification/reinvestigation in the Revenue District Offices
2.	Regional Director	Cases pending in the Divisions in the Regional Office, including cases pending approval by the Regional Director"

(Emphasis supplied)

The foregoing RDAO supports the contention of petitioner that the Assistant Commissioner of the Large Taxpayers Service is authorized to sign the waiver.

However, the same RDAO also contains the following provisions:

> "The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. **In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The "WAIVER" should not be accepted by the concerned BIR office and official unless duly notarized**." (Emphasis supplied)

We agree with the findings of the Court in Division that records do not show the notarized authority of Ms. Nila Infante to sign the waiver in behalf of respondent First Lepanto Taisho Insurance Corporation, hence, the said waiver is invalid.

Even granting *arguendo* that the first waiver was valid, the right of petitioner to assess the respondent has prescribed because the second waiver, which supposedly extended the period to assess and collect petitioner's deficiency income tax from December 31, 2002 to December 31, 2003, also suffered from infirmities as it violates the mandatory provisions of RMO No. 20-90.

At this juncture, the relevant provisions of RMO No. 20-90 need to be quoted:

> In the execution of said waiver, the following procedures should be followed:
>
> 1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after ______ 19 ___" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.
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> 2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.
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> Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.
>
> xxx xxx xxx
>
> 4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

> 5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with."

In the case at bar, the second waiver failed to state both the date of execution by the taxpayer and the date of acceptance by the petitioner. In addition, the respondent was not furnished a copy of the accepted waiver.

Relative to the foregoing, petitioner avers that the pronouncement in the case of ***Philippine Journalists, Inc. v. Commissioner of Internal Revenue***[7] applies to the present case. In the said case, the Supreme Court held that the date of the acceptance by the BIR could have been the date of execution for as long as the concerned Revenue District Office has the authority to sign the waiver on the part of the government.

Petitioner further contends that the date of execution of the waiver is the date of acceptance by the BIR, thus, since the second waiver was allegedly notarized on May 21, 2002, the said waiver was presumably executed and accepted by the BIR on that day.

We disagree.

At the outset, We note that the *Philippine Journalist* case did not mention nor establish a legal presumption that the date of notarization is deemed to be the date of acceptance of the BIR.

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[7] supra.

Moreover, records reveal certain irregularities in the waivers. The first and second waivers were notarized on the same day, May 21, 2002.[8] This is highly questionable and may explain why the second waiver did not indicate a date of execution. We also noticed that the signature of Assistant Commissioner –Large Taxpayers Service Edwin R. Abella in the first waiver differed from his signature in the second waiver.

More importantly, as found by the Court in Division, petitioner failed to refute respondent's contention that the latter was not furnished a copy of the second waiver. Hence, there is a violation of RMO No. 20-90 which expressly requires that the Commissioner of Internal Revenue or the revenue official authorized by him shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the execution by the taxpayer and the acceptance by the Bureau should be dated before the expiration of the prescriptive period or before the lapse of the period agreed upon in case a subsequent agreement is executed. We quote with approval the ruling of the Court in Division in this wise:

> "Records further show that petitioner[9] was not furnished a copy of the waiver. Under RMO No. 20-90, the waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer, and the third copy for the Office accepting the waiver. When petitioner's representative signed the waiver, it was not yet complete and final because the BIR has not agreed thereto. The law is explicit that the taxpayer must receive a copy of the waiver after the BIR has accepted and agreed to the waiver. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document, but also of the acceptance of the BIR and the perfection of the agreement. **To adopt respondent's view[10] that petitioner cannot impugn the validity of**

[8] BIR Records, pages 476 and 480.
[9] Herein respondent.
[10] Herein petitioner.

> **the agreement by the simple expediency of denying knowledge of the acceptance will render naught the requirement of the RMO that the BIR furnish the taxpayer with a copy of the waiver assented to by the BIR."** (Emphasis supplied)

Since the second waiver is legally infirm, there was no valid extension of the period from December 31, 2002 to December 31, 2003 within which the petitioner may issue an assessment notice. Thus, as correctly held by the Court in Division, the FAN dated October 28, 2003 and received by the respondent on October 29, 2003 was already time-barred.

WHEREFORE, finding no justifiable reason to reverse the assailed Resolutions dated October 5, 2005 and February 20, 2006, the instant Petition for Review is hereby **DISMISSED** for lack of merit and the assailed Resolutions dated October 5, 2005 and February 20, 2006 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

Olga Palanca Enriquez
OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice